

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Agriculture Committee

BILL: SB 2244

INTRODUCER: Senator Altman

SUBJECT: Land Used for Conservation Purposes

DATE: March 27, 2009

REVISED: 3/24/09 3/31/09

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Malloy	Yeatman	CA	Fav/1 amendment
2. Akhavein	Poole	AG	Fav/1 amendment
3.		EP	
4.		FT	
5.		WPSC	
6.			

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... ☐ Statement of Substantial Changes
B. AMENDMENTS..... ☐ Technical amendments were recommended
☐ Amendments were recommended
☒ Significant amendments were recommended

I. Summary:

This bill implements s. 3(f), Art. VII, State Constitution, providing an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law. The bill further implements s. 4(c), Art. VII, State Constitution, providing that land used for conservation purposes shall be classified by general law and assessed solely on the basis of use. These revisions to the State Constitution were proposed by the Florida Taxation and Budget Reform Commission, and were approved by voters in the 2008 General Election.¹

This bill creates s. 196.1962, F.S., and amends ss. 193.011 and 193.501, F.S.

¹ The Florida Tax and Budget Reform Commission (TBRC) was created in 1988 when voters approved an amendment to the State Constitution to transfer the authority to review state and local taxation and budget issues from the Constitution Revision Commission to the TBRC. The TBRC is established every 10 years with 11 members appointed by the Governor, none of whom may be a legislator at the time of appointment, 7 members appointed by the Speaker of the House of Representatives, 7 members appointed by the President of the Senate, and 4 non-voting ex officio members all of whom must be state legislators at the time of appointment and must meet additional requirements. The 2007-2008 TBRC adopted the conservation land proposals as a Combined CS for CP's 15 & 16, First Engrossed, and the proposal was Revision 4 on the ballot of the 2008 General Election.

II. Present Situation:

Just Value— Art. VII, section 4 of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, the settled law in Florida has been that “just valuation” is synonymous with “fair market value,” and is defined as what a willing buyer and willing seller would agree upon as a transaction for the property.²

The Florida Constitution authorizes certain alternatives to the just value standard for specific types of property. Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use.³ Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.⁴ In addition, the “Save Our Homes” assessment limitation to the Florida Constitution provides a limitation on the amount by which assessments for homesteads may be changed on January 1 of each year.⁵ Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.⁶ Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.⁷

Taxable value— The taxable value of real and tangible personal property is the just value (fair market value) of the property, adjusted for exclusions (agricultural lands, etc.), differentials (Save Our Homes), or exemptions (homestead) allowed by the constitution or by state law as authorized in the constitution.

Conservation Lands Constitutional Amendment— In November 2008, Florida’s voters approved an amendment proposed by the Florida Tax and Budget Reform Commission,⁸ to provide an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law, and to provide that land used for conservation purposes shall be classified by general law and assessed solely on the basis of use.

² *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dad County*, 275 So.2d 4 (Fla. 1973)

³ Art. VII, section 4(a) of the State Constitution.

⁴ Art. VII, section 4(c) of the State Constitution.

⁵ Art. VII, section 4(d) of the State Constitution provides that changes in the prior year assessment may not exceed the lesser of three percent or the percent change in the Consumer Price Index.

⁶ Art. VII, section 4(e) of the State Constitution.

⁷ Art. VII, section 4(f) of the State Constitution.

⁸ The Florida Tax and Budget Reform Commission (TBRC) was created in 1988 when voters approved an amendment to the State Constitution to transfer the authority to review state and local taxation and budget issues from the Constitution Revision Commission to the TBRC. The TBRC is established every 10 years with 11 members appointed by the Governor, none of whom may be a legislator at the time of appointment, 7 members appointed by the Speaker of the House of Representatives, 7 members appointed by the President of the Senate, and 4 non-voting ex officio members all of whom must be state legislators at the time of appointment and must meet additional requirements. The 2007-2008 TBRC adopted the working waterfronts proposal as a CS for CP’s 6, 8, & 34, Second Engrossed, and the proposal was Revision 6 on the ballot of the 2008 General Election.

Conservation Lands— Florida has a long tradition of supporting conservation efforts to protect the environment. The state currently has more than 9.5 million acres in state, federal, and local conservation lands. The Florida Natural Areas Inventory indicates that as of March 2008, the distribution for acreage includes:

• Federal Conservation Lands	4,026,748
• State Conservation Lands	5,281,440
• Local Conservation Lands (County & City)	408,197
• TOTAL	9,716,385
• Private Conservation Lands	175,661

Conservation Easement— Section 704.06, F.S., provides statutory authorization for conservation easements, and provides that a conservation easement is “a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded conditions; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.” The statute provides a list of activities which must be prohibited or limited by a conservation easement.

Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will or other instrument executed by or on behalf of the property owner. Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes meet the statutory purposes of a conservation easement. Conservation easements run with the land and are binding on all subsequent owners, and must be recorded in the public records.

Benefits for Conservation Easements— Potential benefits of conservation easements include federal income tax savings, federal gift and estate tax savings, and federal estate tax exclusions. Section 170(h) of the Internal Revenue Code provides the requirements under which a conservation easement may qualify for federal income and estate tax deductions. A “qualified contribution” must meet three requirements:

- It must be a qualified real property interest meaning the entire interest of the donor other than qualified mineral rights; or a remainder interest; or a perpetual restriction on the use of the property.
- The easement hold must be a qualified organization meaning a governmental agency or a public charity with conservation goals.
- The conservation purposes of the easement must be clearly defined meaning:
 - The preservation of land areas for outdoor recreation by, or the education of, the general public,
 - The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems;
 - The preservation of open space, including farmland and forest land, where the preservation is for the scenic enjoyment of the general public, or preservation meets a clearly delineated state or federal environmental policy and will yield a significant public benefit, or the preservation is of a historically important land area or a certified historic structure.

The Georgia Legislature created several incentives for land conservation. The Land Conservation Revolving Loan Fund provides low interest loans to cities, counties, and nonprofit organizations to purchase land or conservation easements with high conservation value and a water quality benefit. Cities and counties are authorized to use general fund revenue, revenue bonds, special local sales taxes, local impact fees assessments, local water access and use fees, and federal grants and private donations to pay back the low interest loan.

The Conservation Tax Credit Act⁹ was enacted by the Georgia Legislature to increase the financial incentives for a willing landowner to donate land or place a conservation easement on the property. Taxpayers can claim a credit against their state income tax of 25 percent of the fair market value of the donated property, up to a maximum credit of \$250,000 per individual and \$500,000 per corporation. The amount of the credit used in any one year cannot exceed the amount of state income tax otherwise due. The property must be donated to a governmental entity or a qualified nonprofit organization and must meet at least one of the conservation goals established in the Georgia Land Conservation Act.¹⁰ The Land Conservation Act also established a grant program to provide funding to cities and counties with an approved community land conservation project and matching funds. However, funding for the grant program is suspended due to economic concerns.

Assessment of land subject to a conservation easement— Section 193.501, F.S., provides for the assessment of lands subject to a conservation easement under s. 704.06(1), F.S., environmentally endangered lands, or lands used for outdoor recreational purposes or park purposes when land development rights have been conveyed or when conservation restrictions have been covenanted. When the development rights for such land are transferred for 10 years or more, or when a conveyance or other covenant has been executed for 10 years or more, the property appraiser may consider no factors other present use, as restricted by any covenant or conveyance. When the development rights for such land are transferred for less than 10 years, or when a conveyance or other covenant has been executed for less than 10 years, the property must be assessed as provided in s. 193.011, F.S. (factors to be considered in determining just valuation) recognizing the use restrictions placed on the land. Property encumbered by a conservation easement under s. 704.06(1), F.S., must always be assessed on the basis of current use because the easement is perpetual.

III. Effect of Proposed Changes:

Section 1. Creates s. 196.1962, F.S., to provide an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes. Provides that such property must be encumbered by a valid and enforceable conservation easement or other agreement that requires:

- The property serve a conservation purpose;
- Requires perpetual retention of the substantial natural value of the property;
- Requires the conservation of native habitat, water quality enhancement, or water quantity recharge;
- Prohibits certain activities and requires the property to be kept in essentially its natural state;
- Includes baseline documentation of the natural values to be protected;
- Is enforceable by a federal or state agency, county, city, water management district, or a federal or state agency or nonprofit corporation designated by one of those entities;

⁹ HB 1107, enacted into law in 2006.

¹⁰ HB 98, enacted into law in 2005.

- Allows for periodic review by the enforcing entity;
- Provides for perpetual enforcement; and
- Provides that the easement is perpetual and nonrevocable.

Provides purposes for which partial uses of a property encumbered by a conservation easement are subject to ad valorem taxation. Real property that is exempt and used for agricultural or silviculture purposes must be maintained under the most recent best-management practices established by the Division of Forestry in the Department of Agriculture and Consumer Services, or by another entity designated by the department.

Provides that the owner of real property encumbered by a perpetual conservation easement must abide by the requirements of the Florida Marketable Record Title Act,¹¹ chapter 712, or any other similar law or rule to preserve the effect of the conservation easement or other instrument in perpetuity.

Real property that is less than 40 contiguous acres is not eligible for the exemption unless the property:

- Contains a natural sinkhole or natural spring that serves a significant water recharge or water production function;
- Contains a unique geological, archaeological, historical, or cultural feature;
- Provides habitat for an endangered, threatened, or species of special concern under state or federal law;
- Is perpetually encumbered by a conservation easement or other instrument that protects a shoreline adjacent to Outstanding Florida Waters,¹² an Estuary of National Significance,¹³ or an American Heritage River;¹⁴ or
- Is perpetually encumbered by a conservation easement or other instrument that protects lands adjacent to public lands which are managed for conservation purposes or adjacent to other private lands that are perpetually encumbered by a conservation easement.

The Department of Revenue shall adopt rules providing for the administration of the exemption.

Section 2. Amends s.193.011, F.S., to provide that when a property appraiser is considering the highest and best use of the property, the use of the property for conservation purposes must be considered.

Section 3. Amends s. 193.501, F.S., to clarify the assessment of lands for conservation purposes, and to provide that conservation easements which are not exempt from ad valorem taxation, and lands covenanted for conservation purposes, may be assessed based on restrictions that limit the use of the property to such purposes for not less than 10 years. Provides that covenants restricting the use of land for conservation purposes may also prohibit other designated uses.

¹¹ Chapter 712, F.S., governs the conditions under which a person has marketable record title to real property, including exceptions.

¹² Established by rule of the Department of Environmental Protection.

¹³ Designated by the U.S. Environmental Protection Agency.

¹⁴ Designated by the President of the United States.

Section 4. Provides that the act shall take effect July 1, 2009, and shall apply to property tax assessments made on or after January 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill limits the authority of cities and counties to raise revenues in the aggregate and is subject to the mandate provisions of s. 18(b), Art. VII, State Constitution. The bill will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill provides an ad valorem tax exemption for lands encumbered by a conservation easement or other agreement that limits the use of the property in perpetuity for conservation purposes. The bill also provides a use classification for lands used for conservation purposes, and provides that the assessment of such lands will be based on existing use as limited by an easement or other restrictive covenant or document.

B. Private Sector Impact:

Residents paying property taxes are likely to see those taxes raised if a local government decides that the millage rate on nonexempt properties will be revised to provide for tax revenues lost under the exemption. However, these residents may benefit from the public use of properties dedicated in perpetuity for conservation purposes.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 191502 by Community Affairs on March 24, 2009:

The amendment implements s. 3(f), Art. VII, State Constitution, by providing an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law. Such property must satisfy the requirements of the Internal Revenue Code¹⁵ for a qualified conservation contribution, or must be encumbered by a valid and enforceable conservation easement or other conservation protection agreement that meets specified requirements. The owner of real property encumbered by a perpetual conservation easement must abide by the requirements of the Florida Marketable Record Title Act,¹⁶ chapter 712, or any other similar law or rule to preserve the effect of the conservation easement or other instrument in perpetuity.

The amendment further implements s. 4(c), Art. VII, State Constitution, by providing that land used for conservation purposes shall be classified by general law and assessed solely on the basis of use. Section 193.501, F.S., is amended to clarify that land used for conservation purposes and subject to a conservation easement or conservation protection agreement, or land with restricted uses due to the conveyance of a development right, is assessed solely on the basis of character or use if the easement, agreement, or development restriction is for a period of 10 years or more. If the conservation easement or conservation protection agreement is less than 10 years, the property shall be assessed under s. 193.011, F.S., recognizing the limitation on use. Conforming revisions are made to s. 704.06, F.S.

Finally, the amendment provides for payment of deferred taxes in cases where the property owner is released from the requirements of the easement, agreement, or other restriction. The Department of Revenue and the Department of Environmental Protection are provided with rulemaking authority. (WITH TITLE AMENDMENT)

Barcode 543006 (amendment to Barcode 191502) by Agriculture on March 31, 2009:

The amendment requires the Legislature to appropriate moneys to replace the reductions in ad valorem tax revenue experienced by fiscally constrained counties which occur as a

¹⁵ Potential benefits of conservation easements include federal income tax savings, federal gift and estate tax savings, and federal estate tax exclusions. Section 170(h) of the Internal Revenue Code provides the requirements under which a conservation easement may qualify for federal income and estate tax deductions.

¹⁶ Chapter 712, F.S., governs the conditions under which a person has marketable record title to real property, including exceptions.

direct result of the implementation of revisions of ss. 3(f) and 4(b) of Art. VII of the State Constitution which were approved in the general election held in November 2008. Each fiscally constrained county is required to apply to the Department of Revenue to participate in the distribution of the appropriation and must provide documentation supporting the county's estimated reduction in ad valorem tax revenue. The amendment provides a formula for calculating the reduction. (WITH TITLE AMENDMENT)